APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,369	03/16/2004	John Michael Lake	RSW920040039US1	3169

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Steven E. Bach Attorney at Law
10 Roberts Road
Newtown Square, PA 19073

EXAMINER
VO, TED T

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/801,369	LAKE, JOHN MICHAEL
	Examiner	Art Unit	
	TED T. VO	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>03 October 2008</u>.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>9-19</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>9-19</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____.

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This is in response to the claims filed on 10/03/2008.

        Claims 9-19 are pending in the application.

Response to Arguments

2.   The arguments have been considered but are not persuasive.

        Applicants' amendment fails to file a terminal disclaimer. The argument fails to
overcome Double Patenting.

        Regarding the argument to the claims rejected under 35 U.S.C 112 second paragraph:
The specification fails to provide adequate descriptions to support the claims. The Applicants'
argument does not point out the description of the claimed limitations which are addressed as
being indefinite.

        With regard to the argument to the claims rejected under 35 U.S.C 101: As noted that it is
very well-know that every text can be compressed. Every length of a file is calculated easily. A
simple editor can tell the length of every file that is edited. In the claims, it repeats these
commons. The whole claims are merely claiming means and programs for calculating the lengths
and ratios of software programs and coming with a metric (it looks like a graph) for comparing
the lengths of software programs. The apparatus with means and the storage medium are merely

a program per se and the storage for storing the program, where the program does nothing but a

calculation, and it does not come up with a real practical result. It is clearly addressed in the

MPEP, these types of claims fail to meet the statutory claims required under 35 U.S.C 101.

Double Patenting

3.   The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees.   A nonstatutory obviousness-type double patenting rejection
is appropriate where the conflicting claims are not identical, but at least one examined
application claim is not patentably distinct from the reference claim(s) because the examined
application claim is either anticipated by, or would have been obvious over, the reference
claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re
Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re
Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may
be used to overcome an actual or provisional rejection based on a nonstatutory double patenting
ground provided the conflicting application or patent either is shown to be commonly owned
with this application, or claims an invention made as a result of activities undertaken within the
scope of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR
3.73(b).

4.   Claims 9-19 are provisionally rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1-8 of copending Application No.

11/853,017 (US pub. No. 2008/0005720). Although the conflicting claims are not identical, they

are not patentably distinct from each other because claims 1-8 are the method claims that are

corresponding to apparatuses and program products presenting in this current application. All the

claims are corresponding to the determination of code complexity based on a ratio.

      This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting

claims have not in fact been patented.

Claim Rejections - 35 USC § 112

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and
> distinctly claiming the subject matter which the applicant regards as his invention.

6.   Claims 9-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

      Means plus functions represent in the claim 9-19. However, the specification has neither

details nor adequate descriptions to support the claims.

      For exmaple, when a text of a program presenting in a user editor, the number of lines

appears in the editor. The length of an actual program text is indicated by the number of

the lines. On the other hand, the actual text of the program when it is presented in a

computer memory will be the length of the sequence of bit 0's and 1's, where the bits

would include the code and blanks. Thus the actual size of this program is the length of

this sequence. The conventional compression is known as to present the program with

fewer bits than the original.

The claim 9 recites "logic for determining a plurality of versions of the software

component and for finding lengths of compressed versions of the plurality of versions of the

software" and "means for compressing each of the versions, to provide the compressed

versions".

It is unclear; whether the claims admit the size of program code and the compression

conventionally or present with a difference. The specification does not detail its method

to present the "means". Examiner would interpret they are all conventional.

Claims 10-19 recites the same as in claim 9; therefore, the claims are indefinite as the

same reason set forth in claim 9.

Claim Rejections - 35 USC § 101

7.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or
composition of matter, or any new and useful improvement thereof, may obtain a patent
therefor, subject to the conditions and requirements of this title.

8.   The claims 9-19 are rejected under 35 U.S.C 101 because the claimed invention is

directed to non-statutory subject matter.

Claims 9-19 recite apparatuses and program storage devices. However, the apparatuses and the

programming instructions in program storage devices merely programmize a formula that

present the complexity. It should be noted that, Chaitin defined the complexity of a sequence of

0's and 1's to be the length of the shortest computer program that will generate the sequence. The

mathematical definition shows that a computer program can be expressed into a set of different

sequences of 0's and 1's. Clearly the ratio of the actual size and reduced size is a measurement

in accordance to the program complexity. It is pure a mathematics. The apparatuses and

program storage devices represent the calculation of a complexity. This calculation is clearly

addressed in the specification with the final result ended by computing ratios Co/C1 and C1/C2.

The specification and the claims as a whole do not direct a programming formula to any

patentability value that effect real world result; i.e. the specification and the claims are within

manipulations for presenting the complexity ratios under computer programming. Such claims

fail to meet tangible, concrete, and practical results, and thus they do not meet the statutory

requirement under 35 USC 101.

        Furthermore, Claims 9, 10, and 11 are clearly programming per se. The claims recite

apparatuses. However, theses apparatuses include only programming elements and no where for

being connected with hardware. The claims which are merely programming or software per se

connected will fail under 35 USC 101.

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from

the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the

mailing date of this final action and the advisory action is not mailed until after the end of the

THREE-MONTH shortened statutory period, then the shortened statutory period will expire on

the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory

period for reply expire later than SIX MONTHS from the mailing date of this final action.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The

examiner can normally be reached on 8:00AM to 4:30PM.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

        The facsimile number for the organization where this application or proceeding is

assigned is the Central Facsimile number 571-273-8300.

        Any inquiry of a general nature or relating to the status of this application should be

directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of

an application may be obtained from the Patent Application Information Retrieval (PAIR)

system. Status information for published applications may be obtained from either Private PAIR

or Public PAIR. Status information for unpublished applications is available through Private

PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov.

Should you have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

       TTV
       December 22, 2008

       /Ted T. Vo/
       Primary Examiner, Art Unit 2191